



January 4, 2000

Ms. Lauralee Vallon  
City Attorney  
City of Hillsboro  
214 East Elm Street  
P.O. Box 568  
Hillsboro, Texas 76645

OR2000-0011

Dear Ms. Vallon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131562.

The City of Hillsboro (the "city") received a request for information relating to a named individual's application for employment with the city, including "background checks." You seek to withhold some of the information responsive to the portion of the request asking for background checks because you contend that such information is subject to a court expunction order.

The expunction order in question, issued in cause number 98-293-3 by the 74<sup>th</sup> Judicial District Court of McLennan County, and dated March 25, 1998, directs that all records pertaining to the arrest of the individual named in the request for a specified offense be expunged. You advise that in 1999, during the process of considering the individual for employment, the city obtained the information in the background check from the Waco Police Department. Although it obtained the background check information from the Waco Police Department after the arrest information was ordered expunged, that arrest information was included in the information provided by the Waco Police Department to the city.

Section 552.107(2) of the Government Code requires withholding information if "a court by order has prohibited disclosure of the information." We note, too, that article 55.03(1) of the Code of Criminal Procedure prohibits, "[a]fter entry of an expunction order," the "release, dissemination, or use of the expunged records and files for any purpose." In our opinion, release of the information at issue is prohibited by these provisions. *See also* Attorney General Letter Opinion No. 93-88 (1993) (copy enclosed). Accordingly you must withhold the portions of the requested "background check" which pertain to the arrest in question.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 131562

Encl. Submitted documents  
Attorney General Letter Opinion No. 93-88 (1993).

cc: Mr. J. Dwight Carmichael  
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Attorneys and Counselors  
64 West Elm Street  
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(w/o enclosures)